

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm  
Tom Burton  
Marshall Johnson  
Cynthia A. Kitlinski  
Dee Knaak

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Complaint of LS Power  
Corporation Against Northern States Power  
Company

ISSUE DATE: December 2, 1994

DOCKET NO. E-002/C-92-899

ORDER APPROVING AGREEMENT  
RESOLVING COMPLAINT AND  
ESTABLISHING AN INVESTIGATION  
INTO THE REASONABLENESS OF  
PAYMENTS UNDER THE AGREEMENT

**PROCEDURAL HISTORY**

On August 7, 1992, LS Power Corporation (LS Power) filed a complaint against Northern States Power Company (NSP or Company), alleging that NSP was refusing to negotiate in good faith or enter into a contract for the purchase of power from LS Power's proposed generation facility in Cottage Grove, Minnesota.

On April 12, 1993, the Commission issued an Order directing the Company to negotiate with LS Power and other developers who had submitted proposals to meet NSP's projected need for intermediate capacity before the year 2000. NSP was further directed to submit the results of its negotiations to the Commission along with an agreement with a developer and a narrative explaining the Company's decision.

On June 17, 1993, NSP filed a memorandum describing its negotiation process and indicating the Company's decision to enter into an agreement with LS Power. NSP proposed to conclude its contract with LS Power within 60 to 90 days.

On August 30, 1993 the Commission issued its ORDER REQUIRING STATUS REPORT AND DECLINING ADDITIONAL INVOLVEMENT IN NEGOTIATIONS. That Order granted NSP's request for additional time to file a signed contract with its chosen developer. The Order directed the Company to file a status report with the Commission by September 15.

NSP filed its power purchase agreement with LS Power along with its request for contract approval on June 28, 1994.

The matter came before the Commission for consideration on October 6, 1994.

**FINDINGS AND CONCLUSIONS**

NSP concluded its negotiations under the Commission's April 12, 1993 Order by entering into a contract with LS Power for the purchase of the net energy and committed capacity of LS Power's proposed co-generation plant in Cottage Grove, Minnesota. The contract provides for purchases over a 30 year term, commencing May 1, 1997 when the plant is expected to begin commercial operation.

The plant will be constructed, owned and operated by LS Power; it will have a capacity of approximately 245 megawatts. The facility is expected to be a Qualifying Facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA), using 3M's Cottage Grove Plant as its steam host. The plant will use natural gas as its primary fuel and will be a fully dispatchable unit which NSP will direct, on short notice, to turn off or to operate at loads ranging between 40% and 100% of committed contract capacity.

The contract contains a number of contractual remedies to NSP if LS Power fails to meet its obligations under the agreement. The agreement also includes regulatory approval as a condition precedent to its implementation. This would allow NSP to terminate the contract if the Commission does not approve the agreement by January 1, 1995.

NSP and LS Power maintain that the Commission should determine whether the contract resolves LS Power's complaint. However, they also assert that the Commission cannot make this determination without assessing the merits of the contract. Therefore, this case presents two principal issues regarding the contract between NSP and LS Power: (1) whether the contract resolves LS Power's complaint; and (2) whether the Commission should take any further action regarding the merits of the contract.

## **I. RESOLUTION OF COMPLAINT**

The Commission finds that the contract between LS Power satisfactorily resolves LS Power's complaint. The complaint, filed on August 7, 1992, alleged that NSP refused to negotiate in good faith or enter into a contract with LS Power.

The Commission addressed the complaint by ordering NSP to negotiate with LS Power and other developers of record for the purchase of the Company's stated intermediate capacity need. NSP did exactly as ordered, negotiating with the developers of record in the proceeding and ultimately entering into a contract with the complainant. This clearly resolves the complaint.

## **II. FURTHER ACTION REGARDING THE CONTRACT**

### Contract Approval

Although the mutual assent to a contract between NSP and LS Power resolves the complaint, the Commission agrees that a decision on the merits of the contract is appropriate here. The alternative to approving the contract in this proceeding would be a prudence review of the agreement in a future rate proceeding. The delay associated with this alternative, however, would pose unnecessary risk to ratepayers.

The lapse of time between NSP's contract negotiations and a future rate case may have a negative impact on the quality or availability of information necessary to effectively evaluate the agreement. The disallowance of some costs in a rate case one, two or three years hence may not provide ratepayers with the full measure of protection that a review in this proceeding could provide. Furthermore, if NSP exercises its option under the contract to terminate the agreement, ratepayers may have to bear the costs and risks of further litigation, assuming LS Power files a new complaint asserting its rights as a QF.

### Additional Procedures to Evaluate Contract

The Commission cannot evaluate the contract adequately without further development of the record on the terms of the agreement. Therefore, the Commission will direct the Department of Public Service (Department) to conduct an investigation to determine whether NSP made the appropriate choice in selecting LS Power and whether the payments under the contract are reasonable. Parties will then have the opportunity to comment.

The Department will be expected to complete the investigation by January 4, 1995, 90 days from the date of the October 6 meeting. This will ensure the Department the time necessary to make a thorough inquiry into this matter. However, the Commission encourages the Department to complete its work sooner if possible to expedite the approval process for the benefit of all concerned. A 30 day comment period will follow the Department's filing of the results of its investigation.

### **ORDER**

1. The agreement between LS Power and NSP resolves LS Power's complaint.
2. The Department shall investigate the contract between NSP and LS Power to determine whether NSP chose the appropriate developer in selecting LS Power and whether the payment terms under the contract are reasonable.
3. The Department shall complete its investigation no later than January 4, 1995. Parties shall submit comments within 30 days after the Department files the results of its investigation.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)